

MINUTES

WARRICK COUNTY AREA BOARD OF ZONING APPEALS

Regular meeting held in Commissioners Meeting Room,
Third Floor, Court House,
Boonville, IN
Monday, September 27, 2010, 6:00 P.M.

MEMBERS PRESENT: Mike Winge, Vice Chairman; Tina Baxter, Don Mottley, Tony Curtis, Judy Writsel and Terry Dayvolt.

Also present were: Susan Hilgeman, Planner I, representing the executive director; Morrie Doll, Attorney; and Christy Powell, Staff.

MEMBERS ABSENT: Larry Willis, Chairman and Sherri Rector, Executive Director.

The meeting was called to order by the vice chairman. Roll call was taken and a quorum was declared present.

MINUTES: Upon a motion made by Terry Dayvolt and seconded by Tina Baxter, the minutes of the last regular meeting held August 23, 2010, were approved as circulated.

The vice chairman explained the rules of procedure to the audience.

SPECIAL USE:

BZA-SU-10-23 Applicants & Owners: Jeffrey Alan Wade & Ronda Wade

PREMISES: Property located on the W side of Trautvetter Rd. (W 950) approximately .5 mile N of the intersection formed by Trautvetter Rd. (W 950) & New Harmony Rd. (N 400). Campbell Twp. 4955 *Trautvetter Rd. Complete legal on file.*

NATURE OF CASE: Applicant requests a Special Use (SU 28) from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow a home workshop to fabricate miscellaneous metal parts in an existing 4000 square foot pole barn in an "A" Agriculture & "Con" Recreation & Conservancy Zoning District. *Advertised in the Boonville Standard September 16, 2010.*

The vice chairman called for a staff report.

Mrs. Hilgeman asked if the petitioners were present and asked that they step to the podium.

Jeff Wade approached the podium.

Mrs. Hilgeman stated they have all the return receipts from certified mail to the adjacent property owners. She stated the owners are Jeffrey Alan and Ronda Wade. She stated they are requesting a special use for a home workshop to fabricate miscellaneous metal parts in an existing 4000 square foot building on 12.1 acres. She stated currently there is a single family dwelling and an unattached accessory building on the property. She stated the subject property and all surrounding property is zoned "A" agriculture and "Con" recreation and conservancy with residences on large lots. She stated as the Board is aware, on July 12th, 2010, the County Commissioners passed a new ordinance to allow home workshops entirely within a dwelling or in an unattached accessory building located on the same lot, parcel or tract of land, consisting of 3.5 acres or more, with a dwelling used for residential purposes, provided the home workshop is clearly incidental and secondary to the use of the property for residential purposes and does not change the character thereof or have any exterior evidence other than a sign not exceeding 25 square feet. She continued that the ordinance allows the home workshop to include light fabricating, manufacturing, building trades, distribution or processing activities, or storage facilities and items or action incidental to the same, provided that such use does not occupy an area in excess of 1000 square feet per acre and not exceed 10,000 square feet. She stated Mr. Wade owns 12.1 acres and so his 4000 square foot building complies with this ordinance. She stated the ordinance also requires that all SU 28 special uses be subject to the following requirements:

1. She stated the person or owner operating the home workshop shall be a resident of the premises. She stated in addition to the owner/operator there shall not be more than 1 employee for every one

thousand square feet of the building being used as the home workshop. She stated this means that Mr. Wade will be allowed to have 4 employees beyond himself and his wife.

2. She continued that in no case shall a home workshop be permitted in an accessory building prior to occupancy of the principal dwelling on the lot. She stated Mr. Wade and his wife reside at this property.
3. She stated the building in which the home workshop is located if other than the residence cannot be closer to the road than the residence. She stated according to the plot plan, the unattached accessory building is behind the residence.
4. She stated the outside storage must be enclosed in a solid fence and not exceed the square footage of the building. She stated the plot plan does not show any outside storage.
5. She stated there shall be no more than 1 commercial vehicle maintained for every 1000 square feet of the building used for the home workshop and shall not be visible from adjacent properties and public roadways.

Mrs. Hilgeman stated there is no flood plain and the property does front on Trautvetter Rd. She stated the applicant states on his application "This seems like a great chance for me to bring a few jobs to the area, and gives me the chance to get started with minimal costs." She stated he has answered the proposed use questions on his application. She stated Aaron Franz with the Health Department is going to require Mr. Wade to install a new septic system per health department regulations and he has obtained his septic permit today so he is good on that end. She stated the application is in order.

The vice chairman asked the petitioner if he had anything to add.

Mr. Wade stated he has always been working for the other guy. He stated he has done this kind of work all his life, 25 years. He stated when he saw that he had a chance to bring this to his property he thought it would be a good opportunity to get started and bring a few good guys with him. He stated what he does now is a pretty large volume of work for the building he is in now. He stated he is currently in Gibson County now. He stated they go through quite a bit of product. He stated he is working for a buddy of his and would like to do it right in his backyard. He stated he doesn't know how it would hurt the neighbors, he has talked to all his neighbors personally and they are all in favor of it. He stated they don't have any problem with it and he can't see any issues. He stated he isn't talking about bringing \$5 an hour jobs, he sees an opportunity to do very well right there.

The vice chairman asked Mr. Wade to explain exactly what kind of work he wants to do.

Mr. Wade stated for the most part it is a machine shop. He stated he runs a C&C Laser cutter that will cut any type of metal up to 1" thick and they also run a couple small C&C Lathes. He stated they just fabricate, they are a job shop and they've built a pretty good client base where they are now. He stated he has talked to the guy who owns the shop and he is all in favor of it, he wants to sell him his equipment and pretty well turn the whole thing over to him. He stated he already has the client base built. He stated if it's metal they pretty well make it and they do some small fabrication needing 2 or 3 guys to help him.

Mr. Dayvolt asked what type of truck traffic he sees coming out of there. He asked if there would be any semis or flatbeds.

Mr. Wade stated single-axel flatbeds. He stated depending on what happens, how well it goes over. He stated he would love to say he needs semis but right now he can't see that.

Mr. Dayvolt stated he didn't know if he was going to have his materials brought in on a semi.

Mr. Wade stated he has a 1 ton flatbed.

Mr. Dayvolt stated so he goes and gets his own materials.

Mr. Wade stated yes, they pretty well buy everything from O'Neal Steel. He stated they are about 7 or 8 miles from his house. He stated he will probably go there every night. He stated he has been planning this for a long time and he didn't realize he was going to get an opportunity to do it in his backyard. He stated he's been talking to them about if he goes into a small shop how he is going to get the material. He stated they are open until midnight. He stated he sees semis and grain trucks but he doesn't want to do that to the neighbors.

Mr. Dayvolt stated he doesn't know if the county has a freeze limitation on that road or not.

Mr. Winge stated he is assuming that he would be subject to the requirements of the weight limits of those roads.

Attorney Doll agreed.

Mr. Winge stated he would have to make plans and break it down into smaller loads.

Mrs. Baxter asked what his hours of operation would be and the noise factor for the time he would be there working.

Mr. Wade stated the laser itself makes absolutely no noise at all. He stated the dust collector that absorbs the smoke makes noise.

Mrs. Baxter asked if someone is standing outside the shop, can it be heard.

Mr. Wade stated yes, a person could hear it but he doesn't think any of his neighbors would hear it.

Mr. Winge stated he is talking about the same machines that he uses himself in his own business. He stated with his machines, a person could hear them from about 50 feet away.

Mr. Wade stated the noise should be minimal. He stated his hours of operation would be 7 am to 5pm.

Attorney Doll asked if there was a report on notice.

Mrs. Hilgeman stated yes she did give a report on notice and they did get all the cards in.

Mr. Winge asked if the Board had any further questions.

Mrs. Writsel stated she had questions on traffic and noise but she thinks he's answered those. She stated it looks like the Tepe residence is pretty close to the building.

Mr. Wade stated he is pretty close and he has talked to him personally every day and he is very interested in what is going on for a lot of reasons.

Mr. Winge stated he thinks he can shed a little light on the noise factor. He stated the Board can look at farming or grain bins, this type of work wouldn't be anywhere near that.

Mr. Wade stated he agrees, a grain bin would be a lot louder.

Mr. Mottley asked if Trautvetter Rd. is paved.

Mr. Wade stated it is paved.

Mr. Winge asked if there were any other questions by the Board. There being none he asked if there were any remonstrators. There being none he entertained a motion.

Don Mottley made a motion findings of fact be made as follows from the testimony and proposed use statement:

1. The USE is deemed essential or desirable to the public convenience or welfare.
2. The USE is in harmony with the various elements or objectives of the Land Use Plan for Warrick County.
3. The USE will not be a nuisance or serious hazard to vehicles, pedestrians, or residents.
4. The USE as developed will not adversely affect the surrounding area.
5. Adequate and appropriate facilities will be provided for proper operation of the USE.
6. The specific site is appropriate for the USE.
7. The USE will provide opportunity for growth of a small business.

And the Application be approved in accordance to the application and plans on file, subject to the following conditions:

1. Subject to the property being in compliance at all times with the applicable zoning ordinance of Warrick County.
2. Subject to all public utility easements and facilities in place.
3. Subject to no more than 4 employees in addition to the owners, based on the 4000 square foot building.
4. Subject to the owner remaining a resident of the residence.
5. Subject to the home workshop remaining in the existing 4000 square foot building as shown on the plot plan.
6. Subject to no more than 4 commercial vehicles and they shall not be visible from the adjacent property or roadway.
7. Any outside storage shall be completely enclosed within an outside fence and shall not exceed 4000 square feet. The fence will require an ILP.
8. A sign not exceeding 25 square feet may be erected to identify the home workshop. The sign requires an ILP.
9. Subject to Health Department regulations requiring a new septic system.

Tony Curtis seconded and the motion carried.

VARIANCE:

BZA-V-10-24 – Applicants & Owners: Elmer & Kerry Stinson

PREMISES: Property located on the S side of Heim Rd. (N 50) approximately 750' W of the intersection formed by Heim Rd. (N 50) and Meece Ln. (W 975), Campbell Twp. Parcel 9 Lake Group, Inc Exempt Division. *9977 Heim Rd. Complete Legal on file.*

NATURE OF CASE: Applicant requests a Variance from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow an Improvement Location Permit to be issued for the construction of a residence on property with an existing residence to be removed in an "A" Agriculture Zoning District. *Advertised in the Boonville Standard September 16, 2010.*

Elmer and Kerry Stinson approached the podium.

The vice chairman called for a staff report.

Mrs. Hilgeman stated they do have all the return receipts from certified mail to the adjacent property owners. She stated the applicants are requesting a variance to allow a second residence on the property. She stated currently they have living quarters in a pole barn on a 4.95 acre lot. She stated the subject property and all surrounding property is zoned Agriculture. She stated the property to the south is agricultural land and there are residences to the north, east and west. She stated the initial ILP that was given on the existing residence was issued for an unattached accessory building in 1999. She stated a remodeling permit for converting the pole barn into a residence was not found, however, Chandler Utilities and the Warrick County Health Department have signed off that the existing water service and septic stating it is adequate for the planned development. She stated there is floodway and flood zone AE on the property but both are at the south end of the property at least 400' away from the proposed residence and 360' away from the existing structure. She stated the applicants state on their application "We faced some financial struggles and were unable to build. We now have our financial situation back in order and are prepared to construct our home." Mrs. Hilgeman continued that any approval should be subject to the existing living quarters being removed in so many days after the certificate of occupancy is issued by the Building Department and the application is in order.

The vice chairman asked if the petitioners would state their purpose for it.

Mrs. Stinson stated to live in it. She stated they are going to leave the pole barn, take out the insides except for the bathroom and make the pole barn an actual garage and then they'll have their house to live in.

Mr. Winge asked if there were any questions by the Board.

Mrs. Writsel asked if the proposed house will be positioned in front of this pole barn.

Mrs. Stinson stated yes.

Attorney Doll asked if he could ask a question.

The vice chairman stated yes.

Attorney Doll asked if they have access to a county road or do they cross someone else's property.

Mr. Stinson stated they own the two lots to the east.

Attorney Doll stated it looks like those are in the flood plain.

Mr. Stinson stated yes for the most part.

Attorney Doll asked when he will start construction on the home.

Mr. Stinson stated as soon as the bank says it is okay. He stated Bill Scales came by today and he is going to take it to the bank board this week. He stated he is hoping by next week to dig.

Attorney Doll asked if he had any idea how long it will take to build the new home.

Mr. Stinson stated they are hoping to be done by May because he will be doing most of the inside work himself.

Attorney Doll asked if after it is finished and they get the certificate of occupancy so they can move in, how much time they will need to remove the living quarters from the pole barn.

Mr. Stinson stated it is going to be coming apart while they build because they are going to use some of the lumber that is in the pole barn for the house they are building. He stated it will be half way taken apart by the time they move in anyway. He stated it won't take very long because he wants to put all of his stuff in there.

Mr. Winge asked if there were any remonstrators. There being none he entertained a motion.

Terry Dayvolt made a motion to approve the Variance application based upon and including the following findings of fact:

1. The grant of the Variance will not be injurious to the public health, safety, morals, and general welfare of the Community. As such, it is further found that the granting of the Variance shall not be materially detrimental to the public welfare.
2. The use or value of the area adjacent to the property included in the Variance will not be affected in a substantially adverse manner. As such, it is further found that the granting of the Variance shall not result in substantial detriment to adjacent property or the surrounding neighborhood.
3. The need for the Variance arises from some condition peculiar to the property involved. The peculiar condition constituting a hardship is unique to the property involved or so limited to such a small number of properties that it constitutes a marked exception to the property in the neighborhood. Such condition is the large size of the 3 properties owned by the applicants coupled with their recent economic hardship endured which has delayed the construction of the home.
4. The strict application of the terms of the Warrick County Comprehensive Zoning Ordinance will constitute a practical difficulty, unusual and unnecessary hardship if applied to the property for which the Variance is sought.
5. The approval does not interfere substantially with the Warrick County Comprehensive Zoning Ordinance adopted pursuant to IC 36-7-4-500 et seq.
6. The granting of the Variance is necessary in order to preserve a substantial property right of the petitioner to use the property in a reasonable manner, and not merely to allow the petitioner some opportunity to use his property in a more profitable way or to sell it at a greater profit.

7. That the hardship to the applicant's use of the property was not self-created by any person having an interest in the property nor is the result of mere disregard for or ignorance of the provisions of the Warrick County Comprehensive Zoning Ordinance.
8. The approval of the requested Variance is the least modification of applicable regulations possible so that the substantial intent and purpose of those regulations contained in the Warrick County Comprehensive Zoning Ordinance shall be preserved.
9. This Variance shall expire six (6) months after this date, UNLESS a Permit based upon and incorporating this Variance is obtained within the aforesaid six (6) month period or unless the provision of the Variance are adhered to within the aforesaid six (6) month period. Upon advance written application for good cause, a renewal for an additional six (6) month period may be granted by the Secretary of the Area Plan Commission.
10. The Variance Application is subject to the terms contained therein and the plans on file subject to the following additional conditions:
 - a) Subject to an Improvement Location Permit being obtained.
 - b) Subject to any required Building Permit from the Warrick County Building Department being obtained.
 - c) Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.
 - d) Subject to all utility easements and facilities in place.
 - e) Subject to the existing living quarters being removed within 60 days of the issuance of the certificate of occupancy.

Don Mottley seconded and the motion carried.

OTHER BUSINESS:

None

ATTORNEY BUSINESS:

Attorney Doll stated he would like to report to the Board of Zoning Appeals that the Indiana Court of Appeals unanimously sustained Judge Meyer's determination that it is legal to build a wind turbine in a residentially zoned district in Warrick County. He stated in about 6 days the period of a request for review expires and it is a published opinion that will be precedent in all 92 counties in the state of Indiana. He stated it is the first such opinion of its kind that he knows of just about anywhere. He stated they adopted the Board of Zoning Appeals argument verbatim. He stated they will recall that Dr. Johnson was before the Board on a 40' variance to a 60' height. He stated they can build 40' high in an "R-2" and what he asked for was 20 additional feet. He stated Judge Meyer said he didn't meet the burden of proof why he needed the 20'. He stated somebody should have stood up that was a meteorologist if Dr. Johnson wanted that extra 20' and said, here are charts that show you wind and here is why they need 20'. He stated nobody did that. He stated Dr. Johnson didn't do that and his specific application would be turned down because he failed to do that. He stated Les Shively, representing the neighbors, Dr. Hamby et al. challenged whether you can ever build a wind turbine as an accessory structure in a residentially zoned neighborhood in Warrick County and Judge Meyer said yes one can because accessory structures change over time. He stated a hundred years ago an outhouse was an accessory structure. He stated today it is not. He stated but today a wind turbine is a lawful accessory structure in Warrick County and he would submit that in all 92 counties they can be built on ones' property up to whatever the height limitations are. He stated if they want to build in the particular zoning district a higher structure, they will have to file for a Variance and bring in some type of defining proof of why it needs to be higher, and then the Board can say yes or no about the height but the structure itself is legal in Indiana.

EXECUTIVE DIRECTOR BUSINESS:

Amend the BZA Rules of Procedure

Attorney Doll stated that Mrs. Rector has asked him to ask the Board to table a rule change out of the Board of Zoning Appeals rules of procedure. He stated Peabody Coal Company is about to bring a special use application to mine a very large tract of ground in the northern part of the county. He stated

they own some of the ground out right and they lease some of the ground and the question is who can be an applicant. He stated the Board's rules require them to not only have an applicant sign but also have the owners sign. He stated in some of these cases, these mineral interests over 50 - 75 years of time have cascaded down family trees to where some small parcels of ground have 25 owners and the ordinance requires them to be present and it is impossible, it will not work, and they are trying to figure out how to balance it.

Mr. Winge asked if they can't just have an attorney or some type of representation.

Attorney Doll stated they can but even getting 25 people to agree to have an attorney show up is not always realistic. He stated they are wrestling with a way to deal with that balancing equal protection and due process rights of the owners against the interests of the county being able to do commerce. He stated they aren't ready to discuss it.

Mr. Dayvolt asked what about power of attorneys.

Attorney Doll stated power of attorneys work too but they've been told by Peabody, they've had a meeting, that sometimes they can't even get a power of attorney so if they had one hold out, one heir that had an interest in this 1000 acres of ground, they can veto the entire application process. He stated and the one question that gets to him is does that one person have the right to deprive the other 75 owners from the revenue they wish to make by having the coal mined upon their land that they've leased to Peabody let alone the ground that Peabody owns. He stated there are arguments on both sides.

Mr. Winge stated he has a suggestion, why don't they treat it like they did the new ordinance they just made up, just require a certain percentage of the real estate to be accounted for, whether its 60-70% or whatever. He stated if they have a few holdouts they don't hold up the whole project.

Attorney Doll stated the courts have different rules. He stated what they are dealing with in the new ordinance they just had tonight was an owner of the property asking to use his or her own property in a specific way. He stated what they are dealing with as far as the special use for mining, where they have ownership that has been passed down by generations and Peabody may not own that ground, they may only have the lease to mine the ground and clearly the owner of the ground has due process rights by the Constitution. He stated they have a right to be noticed and a right to be present. He stated the BZA ordinance doesn't only say they have a right to be present it says they SHALL be present and the question gets to be if the ordinance exceeds the law. He stated by saying they shall be present, is that too much when what they have is an obligation under equal protection is to give them notice so if they choose to be present, to voice an opinion, pro or con, they have a right to do so. He stated that is the debate they are having now. He stated they don't want to stop jobs and economic development but they want to make sure they don't trample anybody's rights either and that is the dilemma Mrs. Rector and he is still dealing with.

Mr. Dayvolt stated and of course Peabody has rights too, even though people that have inherited these properties may be opposed to mining, but their forefathers entered into a contract with Peabody and sold the rights to that ground so they retain the rights to the top of it but Peabody has the rights underneath it.

Attorney Doll stated but the mining will impact the top as well so clearly they have to have some means of being noticed. He stated if not required to be present personally or by a representative or power of attorney, they have to have notice. He stated he is convinced the law requires them to know what is going to happen. He stated it is only fair and is constitutionally required so they are working on this to see what they need to do. He stated they are going to bring somebody something. He stated it will be the Commissioners and the Area Plan Commission and everybody he guesses but Mrs. Rector has asked him to ask the Board to remove it from the agenda tonight.

Mrs. Writsel asked if there can be an opt out clause added to that ordinance stating that any landowner who signs something in front of a notary says they can opt out of coming to the meeting.

Attorney Doll stated that is a possibility but it would still put a burden on the applicant to get everyone to sign the waiver.

Mr. Winge asked if they can change the wording to 'may be present' instead of 'shall be present'.

Attorney Doll stated that is an option and the other option would be that they do notice and say the applicant brings the application and must prove that they have sent notice certified mail to everybody who is an interest holder. He stated the problem is it puts the Board in the burden of then saying they know who all these people are. He stated that is a big responsibility because it is like an oil lease.

Mr. Dayvolt stated as appointed representatives of the County, they are appointed to represent those people as well.

Attorney Doll stated he is convinced if they don't involve them in some meaningful way, they violate their rights. He stated he can't support doing that and neither can Mrs. Rector but they are trying to figure out a way that protects their rights but also gives them an opportunity to proceed if they don't physically come or send a lawyer or sign a power of attorney.

Mr. Dayvolt stated he thinks they need to send a certified letter and if they do not appear they forfeit their rights.

Attorney Doll stated this is a big deal, not just in the confines of the Coal Company but think of every special use they have. He stated they require an applicant to show up AND an owner at every special use they have, every time. He stated many times it is one and the same but it doesn't have to be.

Mr. Winge asked if they can change that.

Attorney Doll stated as long as they do not violate their rights to meaningful notification and give them an opportunity to participate.

Mr. Dayvolt asked haven't their forefathers already waived those rights.

Mrs. Writsel stated she happens to be one of those property owners. She stated she owns 20 acres and she would want to know and have some questions answered. She stated she doesn't have a house on there now but are they going to pay her mine subsidence insurance for the rest of her life if she does decide to build there. She stated there are questions, how deep are they going etc.

Mr. Mottley stated it will be 8000 acres.

Mr. Winge stated the question here is if the owners are notified properly and that they've been given an opportunity to participate. He stated if they change the rules of procedure to say from 'shall' to 'may' and they document that they are all notified then they have the opportunity to come.

Attorney Doll stated the final decision rests with the County Commissioners because only they can adopt the rules of procedure and this Board plays by their rules, they make the law for Warrick County but it is up to this Board to make the recommendation to them as to how to make this work. He stated making 'shall appear' into 'may appear' or 'shall receive prior notice by certified mail with proof being brought to the Board of Zoning Appeals' probably will satisfy his worry about due process. He stated they are not prepared tonight and they are going to bring it to the Board probably at the next meeting.

Mr. Dayvolt stated he thinks it is a case of where they make every effort. He stated to notify the people and give them every opportunity to come in here.

Attorney Doll stated they open Pandora's Box in this regard. He stated if they send notices out, they have an address for a certain person, but it is not correct and it comes back returned, now what do they do. He stated many of these heirs don't live here. He stated most of the time the property owners they are dealing with live in Warrick County, it is their property, but now they are talking about people that have been blown by the wind all over this country.

Mrs. Hilgeman asked if it isn't the property owners responsibility to make sure the County has their current address.

Attorney Doll stated for taxation reasons somebody is getting a tax bill but it may not be all of them, it may be one of them that takes care of the taxes even though there are 20 heirs. He stated it may be a case where one person takes care of the taxes and says, we'll see the rest of you at Christmas. He stated that happens in families. He asked how they reach everyone if they are some place in New York City and they don't know the address.

Mrs. Hilgeman stated she would think by notifying the person on the tax records, it would be their responsibility for them taking on the taxes to notify everyone else under them.

Mr. Dayvolt stated that tax bill is the legal owner of the property.

Mr. Winge stated not only that, they are representing them in paying the taxes, why can't they represent them as far as notification is concerned.

Attorney Doll stated that is an argument. He stated those are all great reasons, he just doesn't want the County to be sued. He stated that is his job as they talked earlier, he is a lifeguard and his job is to keep the Board from drowning. He stated he wants to make sure they don't violate anyone's rights while at the same time they don't stop commerce from happening if it is done correctly.

Mr. Mottley stated he sees where it could be an issue down the road if someone comes to that meeting and they hear that they don't have to be there and then there are five in the family and only one shows up and he says it's okay to let the coal company do this and then the others come back and disagree.

Mr. Dayvolt stated he is not saying they defer to that but he is saying that they would be notified and told that it would be their responsibility. He stated if they notify them that this is happening and they have a certain time to respond to it, if they don't respond, that is on them.

Attorney Doll stated this is an old lease caused problem. He stated current leases the coal companies sign with landlords have a power of attorney clause in them that says for all government regulation purposes the landlord is giving the coal company power of attorney to appear and deal with zoning issues etc. He stated old leases, 25 year old, 50 year old, 100 year old leases...

Mrs. Writsel stated hers is over 60 years old.

Attorney Doll continued do not have those clauses because frankly zoning didn't exist then. He stated nobody had any reasons to think they needed this back then. He stated this problem will work away with time but not in their lifetime. He stated Warrick County is a coal mining county, always has been and at least as long as coal is used in America, probably will continue to be in some sort or another. He stated some of this ground is being mined for the second time. He stated Mr. Mottley is right, this is not an 8000 acre application; he thinks it's a 1000 or 1500 acre application, but that is a big application. He stated but there are 8000 acres up there.

Mr. Mottley stated the total application at the DNR is 8000 some odd acres but he thinks they are breaking it down.

Attorney Doll stated there is a map they have all looked at that shows the area that is being brought before them that is permitted and right in the center is about 15 pieces of property that has got this problem. He stated all around it in all the other areas they don't have a problem.

Mr. Winge stated and they are all land locked.

Attorney Doll stated correct and they are right in the center of the problem and they need to address it because if they are doing 8000 acres, this is the first of however many applications.

Mr. Mottley stated Frank Jones got all that ground, the house that he bought from him and all those houses on Bethany Church Rd. and all that ground. He stated it was a settlement because the coal company mined around him and didn't give him access out and he sued. He stated there are going to be some issues coming in front of the County one of these days and he hopes he's not around when they do. He stated for example, Penila Dr. He stated somebody is coming up with documentation that the County was paid by the coal company to re-build Penila Dr. and they never put it back in. He stated the Yankeetown water line runs down the center of the road. He stated they let a guy build a cul-de-sac back there and that is where it ends. He stated now the other people are saying the County is not going to come and take their property to build the road. He stated then the coal company should have built it instead of leaving that high wall. He stated it is getting ready to happen because 2 or 3 people are doing the research and have been to Indianapolis etc.

Mr. Dayvolt asked why it is not Peabody's responsibility since it is their application, their lease, to give notice and prove to them that they have given notice to all parties involved.

Attorney Doll stated it would be but that puts the County in the position of evaluating who all applicable parties are. He stated they would have to have title documents that would go back and show who everybody is.

Mr. Dayvolt stated if they did not do their homework and give the County the correct information, then it is their baby not the County.

Attorney Doll stated but that won't keep the County out of a lawsuit. He stated if one owner doesn't get notice and her rights are somehow not protected under the protection clause and she doesn't know what is going on and then finds out the County under government authority gave them permission to mine her property which is leased, but she didn't have notice of this to ask her questions, she could bring a section 92 action against the Board for discrimination and violation of her rights under cover of government and the County could be sued. He stated they could have all the hold harmless clauses in the world that says Peabody will protect Warrick County but companies go broke. He stated there are companies that have gone broke in this company in the last 2 years that none of them ever thought would. He stated he is not here to tell them or guarantee that Peabody Coal Company will be here in ten years.

Mr. Dayvolt stated then how do they do that without hiring another person just to go sit over at the Auditor's office and find out who all these people are.

Attorney Doll stated these are all great questions and that is why they are not prepared tonight because they haven't figured this out yet.

Mr. Winge stated then we need to have a motion to table this issue.

Terry Dayvolt made a motion to table the discussion of the amended rules of procedure.

Don Mottley seconded and the motion carried.

Mr. Winge called for a motion to adjourn.

Tony Curtis made a motion to adjourn.

Tina Baxter seconded and the motion carried.

The meeting adjourned at 6:50 pm.

Mike Winge, Vice Chairman

ATTEST:

The undersigned Secretary of the Warrick County Board of Zoning Appeals does hereby certify the above and foregoing is a full and complete record of the minutes of said board at their monthly meeting held September 27, 2010.

Susan Hilgeman, Planner I